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THE OFFICE OF SURVEYOR OF THE DISTRICT OF COLUMBIA

By Henry B. Looker.

[Read before the Society February 7th, 1898.]

By the Act of Congress approved July 16, 1790 (U. S. Stats 1, p. 130), after defining the general limits within which the District should be fixed, the President was empowered to appoint three Commissioners to survey and by proper metes and bounds define and limit a district of territory for the permanent seat of the government of the United States. These Commissioners were also empowered to purchase or accept such land as should be needed and to "provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government".

The Commissioners were appointed and under their direction, the District was surveyed and marked; plans for the Federal City were prepared showing the location of the various government buildings; agreements were drawn up and signed by the proprietors of the land selected for the site of the City, by the terms of which there was to be a division of the squares and lots after the city was laid out; architects and contractors were employed upon the public buildings and the survey of the city was proceeded with.

The Act of Congress approved May 1, 1802 (U. S. Stats 2, p. 175) abolished the above mentioned Board of three Commissioners, and provided, as their legal successor, a Superintendent, to be appointed by the

President; and the Commissioners were required to deliver up to such Superintendent "all plans, drafts, books, records, accounts, deeds, grants, contracts, bonds, obligations, securities and other evidences of debt, in their possession, which relate to the city of Washington, and the affairs heretofore under their superintendence or care."

The Act of Congress approved January 13, 1809 (U. S. Stats 3, p. 511) prescribes the duties of the Surveyor of the city of Washington and proceeds as follows:

"Sec. 7. That all records of the division of Squares "and lots heretofore made between the public and orig- "inal proprietors, or which are authorized by this Act, "shall be kept in the office of the Surveyor of the city "of Washington, and all transcripts therefrom, certi- "fied by him, shall be evidence equally valid with the "certified transcripts from the keeper of the office for "recording deeds for the conveyance of land in the "county of Washington."

Section 8 provides that lots or squares belonging to the United States within the city of Washington may be subdivided by the said Surveyor under direction of the President:

Section 9 requires that the Surveyor, shall, before entering upon the duties of his office, take an oath or affirmation before the Mayor of the city of Washington, that he will faithfully and impartially perform his duty.

Down to this time (1809) it is perfectly apparent that the Commissioners and subsequently the Superintendent had the legal custody of *all* the records—maps of the District and of the city, plats of the squares and lots, deeds of the original proprietors, etc., etc., as well as contracts for the erection of buildings, bonds, obligations, and accounts of every sort connected with their duties: but the time had doubtless now been reached

when the "laying out" of the city had been completed, and a division of the records and duties of the Superintendent became not only a natural and logical sequence, but a business necessity.

That it was the intention of Congress in passing the Act of 1809, to bring about just such a division, and to make an absolute and complete separation of the two offices seems clear, from the fact that a new title was given to the Surveyor; his duties were defined and enlarged; he was required to take an oath; he was equipped with the records pertaining to his new office; he was made the only officer whose certificate of transcripts of those records was legal evidence, and he was given the power to subdivide government property as well as that of private individuals.

The Surveyor of the city of Washington thus became the legal successor of the original Commissioners and of the Superintendent, so far as relates to the survey, location, and subdivision of land and the custody of *all* the records (then in the Superintendent's possession) bearing upon such work; and if it can be shown that the present office of Surveyor of the District of Columbia is the legal successor to the office of Surveyor of the city of Washington mentioned in the Act of 1809, it must necessarily follow that this office is entitled to the same records.

Before proceeding to show the continuity of the office of Surveyor, I desire to call attention to the later legislation respecting the Superintendent and his successors.

After the destruction of the Capitol and other government buildings by the British in 1814 the Superintendent was assisted in the labor of rebuilding by three Commissioners.

By Act approved April 29, 1816 (U. S. Stats 3, p. 324) Congress abolished the office of the three Commission-

ers for the superintendence of the Public Buildings. and also the office of Superintendent, and in lieu thereof, provided for the appointment by the President, of one Commissioner, to perform all the duties with which the said three Commissioners and the Superintendent had been charged, and he was to receive from the three Commissioners "all plans, drafts, books, records, ac- "counts, contracts, bonds, obligations, securities and "other evidences of debt in their possession, which be- "long to their office," and from the Superintendent "all "documents, securities, books and papers relating to his "office." Attention is called to the fact that nothing is said about the transfer of maps or plats of squares and lots to this Commissioner as in the Act of 1809 to the Surveyor.

In the Sundry Civil Bill passed by Congress and approved March 2d, 1867 (U. S. Stats 14, p. 466) the office of Commissioner of Public Buildings and Grounds was abolished and the Chief of Engineers of the Army was required to perform all duties of the former, and consequently became the custodian of all records *legally* held by said Commissioner, but this law does not specify the transfer of any public property, as is clearly done in the two previous acts transmitting these duties. The Chief of Engineers in his report of 1895, referring to this Act of March 2, 1867, says he "thereby became the lawful successor of the "original Commissioners appointed by President Washington in 1791 "and the custodian of the original records." In this conclusion I cannot concur, so far as relates to the records of division of lands in the city of Washington and the maps and plats relating thereto, because, as has been shown above, those maps, plats and records had been diverted from the office of the Superintendent by the Act of 1809.

Now to return to the question of the continuity of the office of Surveyor:—

The first mention made of such an officer, in the statutes, is in the Act of Congress approved March 3, 1803 (U. S. Stats 2, p. 335) fixing the compensation of "the Surveyor."

In the Act approved March 27, 1804 (U. S. Stats 3, p. 397) the compensation of "the Surveyor" is fixed at $3.00 a day, to be paid by the Superintendent, thus showing apparently that the Surveyor was a subordinate of the Superintendent at that time, though quite possibly a direct appointee of the President during the whole period from 1796 to 1815,—data as to Nicholas King giving color to this view, and there being nothing to controvert it in any of the records I have been able to reach.

In 1802 (U. S. Stats No. 2, p. 195) by Act approved May 3 (or two days after the approval of the Act constituting the office of Superintendent) Congress authorized the incorporation of the city of Washington, the council being elective, the Mayor to be appointed by the President. The Mayor was authorized to appoint all officers under the corporation, and therefore *presumably* the Surveyor of the city.

Then comes the Act of 1809 concerning the office of Surveyor of the city of Washington (so called, for the first time in any Act of Congress) and requiring that officer to qualify by taking an oath of office before the Mayor of the city of Washington.

It would seem that this Act paved the way for the transfer of the Surveyor's office, from under the control of the General government to that of the municipal government, for, although the office was probably still under at least the nominal control of the general government, the Surveyor's services were doubtless chiefly

needed by the city government and the citizens generally.

Nicholas King, who had long been a Surveyor under the Commissioners and the Superintendent, was the first person appointed "Surveyor of the City of Washington" and his signatures in Record Book "N. K." also in Book 1 of Division of Squares, (records of the Surveyor's office) show clearly that he signed as such from August 1809 until July 1811. He was succeeded by his son Robert King, who signs as surveyor of the city of Washington until December 10, 1812.

For the next two years and a half, so far as the records of this office are concerned, there does not appear to have been any work for a Surveyor of the city of Washington. At any rate there are no surveys recorded or signed during that time, but under date of August 3, 1815, the Council of Washington passed an ordinance, (13th Council Chap. 32, p. 28,) doubtless in pursuance of the original Act of Incorporation of May 3, 1802, directing the Mayor to appoint "a citizen, resident of the city, who shall be styled and known as the Surveyor of the city of Washington."

Benjamin H. Latrobe was the first appointed under the new régime, and he was succeeded by others appointed in the same way, continuously until 1848, when by Act of Congress approved May 17, 1848 (U. S. Stats 9, p. 223) the charter of the city was amended and the Surveyor made an elective officer.

Section 8 of this Act provided that "the office of the "Surveyor of the city of Washington shall be the legal "office of record of the plats of all the property in the "city of Washington."

The Surveyor was elected by the people from 1848 to 1871, the date of inception of the Territorial form of government, under which the Governor of the District

of Columbia appointed the "Surveyor of the District of "Columbia." Subsequently, and to the present time, the Surveyor of the District of Columbia has been appointed by the Commissioners of the District.

In view of the provisions of the Act of 1809 and of Section 8 of the Act of 1848 it seems very difficult to reach any other conclusion than that the office of Surveyor is the proper repository of *all* the original records affecting in any way the determination of the location and boundaries of any parcel of land within the city of Washington whether public or private. The Acts of 1809, 1836, 1848 and 1895 show clearly the legal continuity of the office to the present day.

Even if there had been a period between Dec. 1812 and Aug. 1815 during which there was no incumbent of the office (a point by no means certain) there was no lapse of the office itself, and this possible question is removed by the recognition of the office by the Act of 1848.

The Surveyor's office is the recognized source of information as to all things relating to the location and boundaries of land in the District of Columbia, and should have in its possession all records bearing upon the work of the office. I think it clear that Congress never intended these original land records to be divided between two offices. Whatever there be of legal authority for their custody, must, in my opinion, apply to them as an entirety unless otherwise specifically provided.

Without exception, the title companies and the members of the bar can be safely said to be in favor of the custody of those records by the Surveyor. This office is frequently compelled, in order to settle a doubtful question, to send to the War Department for certified copies of divisions of Squares, the originals of which

are in the office of the Officer in charge of Public Buildings and Grounds, the bound copies in the Surveyor's office being sometimes found defective either by omission or error. And this must be done, although this office is the only office empowered by law to furnish certified copies of all these records, (which certified copies must be accepted as final evidence). Without permission obtained through the usual official channels the Surveyor cannot verify the certified copies from the War Department, by comparison with the originals, and possible mistakes in such certified copies might subject the Surveyor to heavy loss under his bond. The four bound volumes of copies of original division of Squares in the Surveyor's office have been here for nearly 90 years. They are in daily use, and without them it would be impossible to transact the business of the office. A recent decision of the Circuit Court in the case of Ashley vs. Bradshaw has pronounced these copies to be originals or practically originals, but this does not relieve the Surveyor of responsibility under his bond in the event of his making a possible mistake through an error in such copies.

The Chief of Engineers of the Army as successor to the Superintendent certainly did not obtain these land records by particular designation; the Surveyor *did*, by the terms of the Act of 1809, so obtain them.

The Act of 1848, clearly confirms, after an interval of 39 years, the Act of 1809 as to the custody of the records of division of squares by the Surveyor.

Why the Surveyor did not at once exercise his legal right to call for and obtain his own records in their entirety does not now appear, nor is it material. Mr. William Forsyth, my immediate predecessor, did, however, strenuously maintain throughout his whole term

of office, covering nearly forty years, that the Surveyor's office should contain all these records.

It seems clear to me, that the division prompted by convenience and propriety was intended to be made by the Act of 1809, viz: the Surveyor should take all that he would naturally require, and that the Superintendent should retain such as were necessary for the care and preservation of the Public Buildings and Grounds, which care was his particular duty. As that division was not made then, it should, in my opinion, be made now, by the transfer to the Surveyor's office, of all records under the control of the Chief of Engineers, relating in any way to the original boundaries of land in the city of Washington.

The names of all the incumbents of the office of Surveyor, so far as I have been able to determine,—with the dates of appointment, are given chronologically as follows:

Nicholas King, Mar. 1st 1809.
Robt. King, June 12th 1812.
B. H. Latrobe, 1815.
J. Elgar, Aug. 6th 1818.
F. C. Dekrafft, Oct. 3d 1822.
Wm. Elliott, July 26, 1838.
Wm. P. Elliott, Sept. 22d 1834.
Randolph Coyle, Aug. 20th 1846.
C. B. Cluskey, Feb. 1st 1849.
H. W. Ball, Nov. 12th 1851.
R. Finley Hunt, July 21st 1855.
Wm. Forsyth, July 1st 1857.
Chas. H. Bliss, July 1st 1867.
P. H. Donegan, July 10th 1869.
Wm. Forsyth (D. C.), June 10th 1871.
Jno. A. Partridge, Aug 27th 1877.
Wm. Forsyth, Apl 4th 1881.
Wm. Forsyth, Mar. 19, 1895.
Henry B. Looker, Aug. 18th, 1897.